

JUL 21 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO BANDA,

Defendant - Appellant.

No. 05-50921

D.C. No. CR-97-01600-RTB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Francisco Banda appeals the district court's order revoking his supervised release and imposing sentence. He contends that the supervised release regime violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005), because the imposition of the maximum penalty depends upon a fact not found by the jury. This contention is foreclosed by *United States v. Huerta-Pimental*, 445 F.3d 1220 (9th Cir. 2006) (holding that because supervised release is imposed as part of the sentence authorized by the fact of conviction and requires no judicial fact-finding, it does not violate the Sixth Amendment principles recognized by *Apprendi* and *Blakely*; that a district court's decision to revoke supervised release and impose associated penalties is for the same reasons constitutional; and that because the revocation of supervised release and imposition of an additional term of imprisonment is discretionary, neither violates *Booker*).

AFFIRMED.